



DEPARTMENT OF THE NAVY

FLEET AND INDUSTRIAL SUPPLY CENTER
JACKSONVILLE, FLORIDA 32212-0097

IN REPLY REFER TO:

CONTDEPINST 4200.15B

CODE 203

12 Mar 2001

CONTRACTING DEPARTMENT INSTRUCTION 4200.15B

SUBJ: PROCUREMENTS USING OTHER THAN FULL AND OPEN COMPETITION

Ref: (a) Federal Acquisition Regulation (FAR), Part 6
(b) Defense Federal Acquisition Regulation Supplement (DFARS), Part 206
(c) Navy Acquisition Procedures Supplement (NAPS)
(d) NAVSUPINST 4200.83E

Encl: (1) Format for Justification and Approvals (J&A)

1. **Purpose.** To establish local procedures for implementation of references (a) through (d) regarding procurements using other than full and open competition.

2. **Cancellation.** Contracting Department Instruction 4200.15A dated 15 Jan 1999 is hereby canceled.

3. **Scope.** This instruction is applicable to all procurement requests (requisitions) exceeding \$100,000 submitted by any activity to the Fleet and Industrial Supply Center Jacksonville (FISC JAX) as a proposed sole source acquisition.

4. **Background.** Reference (a) Part 6, Competition Requirements, applies to all acquisitions except those addressed in paragraph 6.001. Reference (a) Part 6.2, requires the use of full and open competition after certain limited exclusions including establishing or maintaining alternative sources; set-asides for small and small disadvantaged businesses; eligible 8(a) contractors; and qualified HUBZone small business concerns. Another exception to this is contracts awarded using Simplified Acquisition Procedures (SAP) of Part 13. However, there are special documentation requirements pertaining to sole source acquisitions of commercial items under Subpart 13.5.

a. Circumstances permitting other than full and open competition require a J&A citing one of the seven statutory authorities set forth in reference (a) Part 6.3. The contents and approvals of the J&A's are described in reference (a) Part 6.303 and 6-304. FISC Jacksonville cannot process the procurement until the requirements of reference (a) through (d) have been met. Enclosure (1) provides a sample format for J&A preparation.

b. Procurements without full and open competition permitted by the exception in reference (a), Part 6.302-4, International Agreement, do not require a written J&A. However, there are specific documentation requirements for the Determination and Findings (D&F).

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5. Procedures and Approvals. The following procedures shall be followed for purchase requests using other than full and open competition and using large purchase procedures:

a. The requisitioning activity will provide all information required by reference (a), Part 6.202 (b) (1) through (3) and reference (b) Part 206.202(b) (i).

b. Every proposed contract action under the authority of reference (a) Part 6.202 and reference (b), Subpart 206.2 for establishing or maintaining alternative sources shall be supported by a D&F signed by the head of the agency. This D&F shall not be made on a class basis.

c. The contracting activity will prepare the D&F required by reference (a), subpart 6.202, in accordance with the format set forth in reference (b), subpart 206.202, Table 6-1, and forwarded to the Navy Supply Systems Command (NAVSUP) for approval in accordance with reference (c), subpart 5206.202.

d. No separate justification or D&F is required under Part 6.203 to set aside a contract action for small business concerns. No separate justification or D&F is required under Part 6.204 to limit competition to eligible 8(a) contractors. No separate justification or D&F is required under Part 6.205 to set aside a contract action for qualified HUBZone small business concerns.

e. Proposed contract actions permitted under the exception in reference (a), Part 6.302-4, International Agreement, require the head of the contracting activity to prepare a document that describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance, that has the effect of requiring the use of other than full and open competition procedures for the acquisition. This document described in reference (b), Part 206.302-4, shall be signed by the FISC Jacksonville Commanding Officer and have concurrence of the FISC Competition Advocate.

f. Reference (a), Subpart 13.5, Test Program for Certain Commercial Items, authorizes the use of simplified procedures for the acquisition of supplies and services in amounts greater than the SAP threshold but not exceeding \$5,000,000, including options, if the contracting officer reasonably expects that offers will include only commercial items.

(1) Special documentation requirements pertaining to sole source acquisitions of commercial items under this subpart require the contracting officers to - -

(i) Conduct sole source acquisitions under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraphs f(2)(i) and f(2)(ii) of this section; and

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(ii) Prepare sole source justifications using the format at reference (a), Part 6.303-2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996).

(2) Justifications and approvals are required under this subpart only for sole source acquisitions.

(i) It is stated in reference (a), FAR subpart 13.5, that for a proposed contract exceeding \$100,000, but not exceeding \$500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures. (See g(2) below)

(ii) For a proposed contract exceeding \$500,000, the competition advocate for the procuring activity, designated pursuant to FAR 6.501, or an official described in FAR 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

g. All other purchase requests for other than full and open competition.

(1) The requisitioning activity will provide all necessary J&A data described in bold in enclosure (1) except paragraphs 7 and 16. This data shall be in the format prescribed by enclosure (1) of this instruction and shall be certified by the appropriate technical and requirement personnel. The assertions and recommendations to support the J&A by the technical and requirements personnel shall be certified by the activity's competition advocate or the requiring activity's commanding officer. The certifications and only the certifications shall be on a separate page. This certification authority may be delegated as follows:

(a) To subordinate officials of the Flag or Senior Executive Service rank; or

(b) To the requiring activity's competition advocate for acquisitions with an estimated value up to \$1 million.

(2) The contracting activity will prepare the J&A by completing and appropriately certifying the data provided by the requisitioning activity. As required by reference (d), NAVSUPINST 4200.83E, all J&As shall have indication of counsel review for legal sufficiency and concurrence by the procuring activity's competition advocate.

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(3) The instructive narrative characterized by bold print in enclosure (1) will not be included in the J&A.

h. When a competitive solicitation results in only one acceptable bid/proposal, the contract specialist/negotiator is responsible for determining whether a prior contract was awarded to a sole offeror under a competitive solicitation and shall document the contract file with the status of recommended competition enhancements.

i. FISC Jacksonville contracting personnel shall not initiate procurement actions using other than full and open competition until the requirements of reference (a) through (d) have been met.

j. For procurement requests submitted pursuant to reference (a), paragraph 6.302-2, Unusual and Compelling Urgency, the Contracting Officer will verify the nature of the urgency and present the facts to the Contract Review Board without delay.

7. Modifications to J&As. As required by reference (d), Enclosure (1) paragraph 6, if negotiations result in a change in the scope of the J&A (i.e. the description of the supplies and services, including quantity or period of performance has changed), a new justification approval must be obtained from the appropriate approval authority prior to award. In addition, per NAPS 5206.304 (a) a new justification approval must be obtained from the appropriate approval authority prior to award when the dollar value of the negotiated contract exceeds the dollar threshold of the original approval authority. For those actions which originally required NAVSUPHQ (SUP 22) approval, the contracting officer shall notify the cognizant SUP 22 analyst by telephone prior to submitting the formal, written notice and prior to taking action which is not in conformance with the approved J&A.

8. Action. All FISC Jacksonville contracting personnel are responsible for compliance with this instruction.


B. J. WARFIELD
Director, Contracting Department

FORMAT FOR JUSTIFICATION AND APPROVAL (J&A)

Insert the following language in all J&As estimated between \$10 million and \$50 million: Upon the basis of the following justification, I, as Deputy for Acquisition Policy, Integrity, and Accountability, hereby approve use of other than full and open competition for the proposed contractual action pursuant to the authority of **(insert the appropriate FAR cite as identified in paragraph 4 below)**.

1. IDENTIFICATION OF AGENCY AND CONTRACTING ACTIVITY: The requiring activity is **(insert name of appropriate requiring activity)**; the contracting activity is the Fleet and Industrial Supply Center, Jacksonville, FL.

2. NATURE/DESCRIPTION OF ACTION: This is a **(insert "sole source," or "limited competitive," as appropriate)** action to be awarded as **(insert "a new contract," "an extension of Contract N68836-00-C-0000," or "an add-on to Contract N68836-00-C-0000," as appropriate)** **(if sole source, insert "to (the proposed contractor's name and location)."** For limited competitive procurements insert the following" Offers will be solicited from **(insert specific contractor names and locations if known or, if specific sources are not known, insert "all known potential sources")**. A **(insert type of contract)** contract is anticipated.

3. DESCRIPTION OF SUPPLIES/SERVICES: **Insert a reasonably descriptive explanation of what is being bought to enable the reader to have a succinct understanding of what it is, what its purpose is, or for what it is being used.**

4. IDENTIFICATION OF STATUTORY AUTHORITY: The statutory authority permitting other than full and open competition is **(insert one, only, of the following)**:

a. 10 U.S.C. 2304(c)(1), Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements, as implemented by FAR 6.302-1.

b. 10 U.S.C. 2304(c)(2), Unusual and Compelling Urgency, as implemented by FAR 6.302-2.

c. 10 U.S.C. 2304(c)(3), Industrial Mobilization; or Engineering, Developmental, or Research Capability, as implemented by FAR 6.302-3.

d. 10 U.S.C. 2304(c)(4), International Agreement, as implemented by FAR 6.302-4.

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e. 10 U.S.C. 2304(c)(5), Authorized or Required by Statute, as implemented by FAR 6.302-5.

f. 10 U.S.C. 2304(c)(6), National Security, as implemented by FAR 6.302-6.

g. 10 U.S.C. 2304(c)(7), Public Interest, as implemented by FAR 6.302-7.

h. 10 U.S.C. 2304-(g), Test Program for Certain Commercial Items, as implemented by FAR 13.5.

5. DEMONSTRATION OF CONTRACTOR'S UNIQUE QUALIFICATIONS: This paragraph represents the "heart" of the J&A and should be comprehensive. If the requirement can be filled only by unique supplies or services available from only one source or limited sources, be sure to address in full the unique qualifications of the sole source or the limited sources. Describe what is so unique about the requirement. Identify what specific capabilities, equipment, knowledge and/or experience the suggested source has that make it the only firm that is able to provide the required supplies or services.

In the case of urgency, fully address the compelling nature of the urgency and how the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. List the date on which the requisition was submitted. Are any delays fully explained? Is the required delivery date stated? Is there an explanation of why that delivery date is required? Is the estimated production lead time for the item stated?

Describe how the government would be injured and what the financial implications might be. Examples: Supplies or services needed at once because of fire, flood, hurricane or other disaster. Supplies or services required to repair roofs or windows to prevent water damage or destruction of computer, office areas, personnel records, etc. Essential equipment or repair needed at once to comply with orders for a ship in order for it to deploy or for an aircraft which is grounded and as a result the Navy cannot perform its mission. Essential equipment or repair needed at once to: Examples: (i) prevent work stoppage of _____ employees at an average hourly rate of \$_____; or (ii) repair the AN/AIR-67 Electronic Counter Measuring System. Failure to repair would result in replacement of the system an estimated cost of \$_____. Explain why the urgency could not have been overcome by advance planning. Contracting without providing for full and open competition shall not be justified on the basis of a lack of advance planning by the requiring activity or concerns related to the amount of funds available to the agency or activity for the acquisition of supplies and services (e.g., funds will expire).

6. CBD ANNOUNCEMENT/POTENTIAL SOURCES: Provide a narrative description of the efforts being made, including whether the acquisition has been or will be synopsized in the *Commerce Business Daily* as required by FAR 5.2, or if not, which exception under 5.202 applies. For procurements in accordance with 10

U.S.C. 2304(c)(2), insert the following statement: The synopsis requirements for FAR 5.201 are hereby waived, pursuant to the authority cited at FAR 5.202(a)(2), since the contract action is being processed under the conditions set forth at FAR 6.302-2 and the Government would be seriously injured if the agency complies with the time periods in FAR 5.203.

7. **DETERMINATION OF FAIR AND REASONABLE COST:** The Fleet and Industrial Supply Center, Jacksonville Contracting Officer will determine that the price negotiated for this acquisition is fair and reasonable pursuant to FAR, Part 15.

8. **DESCRIPTION OF MARKET SURVEY:** **Describe the market survey that was conducted or reasons why a survey was not conducted. "Market survey" means attempts to ascertain whether other qualified sources capable of satisfying the Government's minimum requirements exist. This testing of the marketplace may range from written or telephone contacts with knowledgeable federal and non-federal experts regarding similar or duplicate requirements, the results of any market test recently undertaken or the more formal "sources-sought" announcement is pertinent (e.g., technical/scientific journal or the *Commerce Business Daily*). Routine pre-solicitation synopsis in the *Commerce Business Daily* as required by Part 5 of the FAR does not constitute a market survey.**

9. **ANY OTHER SUPPORTING FACTS:** **Include any other facts supporting the use of other than full and open competition. The following items must be addressed when applicable:**

a. Explanation of why technical data packages, specifications, engineering description, statements of work, or purchase description suitable for full and open competition have not been developed or are not available, the following questions should be considered in preparing your statement on the subject:

(1) Does your activity possess a complete technical data package?

(2) If not, is there a technical data package that is in the possession of some other organizational element of the Navy?

(3) Does your activity have a technical data package which contains restrictive legends?

(4) Was the technical data package acquired under a DOD contract containing the standard general provision covering rights in technical data?

(5) Is there any question as to whether a restrictive legend has been applied in a manner which is consistent with the requirements of the standard general provision covering rights in technical data?

(6) Has an effort been made to obtain permission from the supplier of the data to use the data notwithstanding the restrictive?

(7) Is the specific acquisition of data developed at private expense necessary in order to obtain a complete technical data package suitable for full and open competition? Would this be of economic value for future acquisitions?

b. When 6.3302-1 is cited for follow-on acquisitions as described in 6.302-1(b)(2), an estimate of the cost that would be duplicated and how the estimate was derived is required.

c. When 6.302-2 is cited, clear rationale as to the extent and nature of the harm to the Government should be addressed. Unusual and compelling urgency must be defined so that it is clear that the Navy would suffer undue harm (i.e., cost, safety hazard, loss of life) if the acquisition is processed under full and open competition procedures.

10. LISTING OF INTERESTED SOURCES: Provide a listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

11. ACTIONS TAKEN TO REMOVE BARRIERS TO COMPETITION: Provide a statement of the actions, if any, the agency (i.e., the Navy) may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services occurs. This paragraph should address good faith efforts being made to enhance competition on future acquisitions and should demonstrate an honest attempt to overcome barriers to competition. It is insufficient to state that future requirements for your activity cannot be predicted if the supply or service is one which is used by other activities in the Navy.

12. STATEMENT OF DELIVERY REQUIREMENTS: For supply contracts insert "Delivery under proposed contract is required" (insert delivery requirements). For service contracts insert "Services under proposed contract will be performed during the period" (insert period of performance).

13. TOTAL ESTIMATED DOLLAR VALUE OF THE ACQUISITION COVERED BY THIS J&A: Include the total estimated dollar value for the acquisition, including options, broken down by fiscal year and appropriation.

14. REFERENCE TO THE APPROVED ACQUISITION PLAN (AP): If not applicable, so state; otherwise, provide reference to the approved AP when the acquisition(s) covered in the justification meet the criteria/thresholds for a written AP (see DFARS 207.103(c)(i)). In addition, a copy of the approved AP shall be attached to each justification requiring higher headquarters approval at the time the justification is submitted for approval. If the cost information contained in the

approved plan is not current and complete at the time the justification is submitted for approval, an updated cost information sheet shall be provided concurrent with and separate from the justification. If the other information contained in the approved AP is not concurrent and complete at the time the justification is submitted for approval, updated AP replacement pages shall be provided with the justification. Each AP replacement page shall contain a current date, the AP number and the justification number. In the event that the AP changes are significant/extensive, consideration should be given to preparing a complete AP update. For those clearly noncompetitive acquisitions such as follow-on buys of certain weapon systems, the justification along with any required AP may be submitted for concurrent approval.

15. DOCUMENTATION FOR SPARE/REPAIR PARTS: **Provide documentation of a review of the specifications to ensure that they reflect the minimum requirements.**

16. IDENTIFICATION OF THE CONTRACT SPECIALIST WHO PREPARED THE DOCUMENT: Prepared by Fleet and Industrial Supply Center, Jacksonville, FL., contract specialist **(insert contract specialist's name and code)**, who can be reached at **(insert commercial and DSN telephone numbers)** and **(insert email address)**.